

**Name and Address:**

Brut, Inc.  
1 Liberty Plaza  
165 Broadway  
New York, NY 10006

**Details of organization:**

Brut, Inc. is a stock corporation formed under the General Corporation Law of the State of Delaware on August 6, 2001.

**Affiliation:**

Brut, Inc. is a wholly owned subsidiary of The Nasdaq Stock Market, Inc.

**Business or functions:**

Brut, Inc. owns a 0.2% interest in Brut, LLC and is its manager pursuant to an operating agreement.

**Certificate of Incorporation:**

Attached as Exhibit A.

**By-Laws:**

Attached as Exhibit B.

**Officers, Directors, and Standing Committee Members**

**Directors:** Christopher Concannon, Brian Hyndman, David Warren

**Officers:** Christopher Concannon, President; Brian Hyndman, Vice President and Secretary; Manuel Alicandro, Chief Compliance Officer; David Warren, Treasurer; Joan Conley, Secretary

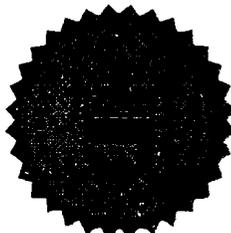
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "BRUT, INC.", CHANGING ITS NAME FROM "BRUT, INC." TO "BRUT INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF JUNE, A.D. 2003, AT 10:01 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3422287 8100

AUTHENTICATION: 2466745

030383853

DATE: 06-11-03

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
BRUT, INC.  
\*\*\*\*\***

Brut, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

**FIRST:** The name of the corporation is Brut, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was August 6, 2001, and the name under which the corporation was originally incorporated is Brut, Inc.

**SECOND:** This Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of this corporation by (i) combining the 10,000,000 shares of Class A Common Stock and the 1,000,000 shares of Class B Common into shares of common stock, and the cancellation of the Class A Stock and the Class B Stock designations; (ii) decreasing the number of authorized shares of common stock from 11,000,000 to 1,000; (iii) changing the per share par value of the common stock from \$.001 to \$1.00; and (iv) changing of the corporate name to Brut Inc.

**THIRD:** The text of the Certificate of Incorporation as amended or supplemented is further amended to read as herein set forth in full:

1. The name of the corporation is: **Brut Inc.**
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000) shares of common stock, with a par value of One Dollar (\$1.00) per share.
5. The corporation is to have perpetual existence.
6. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to make, alter or repeal the by-laws of the corporation and to authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.
7. The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

*State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:01 PM 06/10/2003  
FILED 10:01 PM 06/10/2003  
SRV 030383853 - 3422287 FILE*

8. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit.

9. This Restated Certificate of Incorporation shall be effective upon filing.

**FOURTH:** This Restated Certificate of Incorporation was duly adopted by written consent of the sole stockholder in accordance with the applicable provisions of Section 228, 242 and 245 of the General Corporation Law of the State of.

**IN WITNESS WHEREOF,** Brut Inc. has caused this Certificate to be signed by Sara G. Armstrong, its Assistant Vice President this 10<sup>th</sup> day of June, 2003.

**BRUT, INC.**

By: /s/ Sara G. Armstrong  
Sara G. Armstrong  
Assistant Vice President

**CERTIFICATE OF MERGER**  
**OF**  
**SUNGARD ECN ACQUISITION INC.**  
**INTO**  
**BRUT, INC.**

Pursuant to Section 251 of the Delaware General Corporation Law, the undersigned surviving corporation organized and existing under and by virtue of the Law of Delaware,

**DOES HEREBY CERTIFY:**

**FIRST:** That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

SunGard ECN Acquisition Inc., a Delaware corporation

Brut, Inc., a Delaware corporation.

**SECOND:** That an agreement of merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the General Corporation Law of Delaware.

**THIRD:** That the name of the surviving corporation of the merger is Brut, Inc.

**FOURTH:** That the Certificate of Incorporation of Brut, Inc., a Delaware corporation, which will survive the merger, shall be the Certificate of Incorporation of the surviving corporation.

**FIFTH:** That the executed agreement of merger is on file at an office of the surviving corporation, the address of which is 32 Old Slip, 10<sup>th</sup> Floor, New York, New York, 10005.

**SIXTH:** That a copy of the agreement of merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

**SEVENTH:** That this Certificate of Merger shall be effective on August 20 2002.

Dated: August 20 2002

**BRUT, INC.**

By: /s/ Sara G. Armstrong  
Sara G. Armstrong  
Vice President & Assistant Secretary

FROM

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 12:00 PM 08/06/2001  
010381813 - 3422287

**CERTIFICATE OF INCORPORATION  
OF  
BRUT, INC.**

**First.** The name of the corporation is BRUT, Inc. (the "Company").

**Second.** The registered office of the Company is to be located at 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware, 19801. The name of its registered agent at that address is The Corporation Trust Company.

**Third.** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**Fourth.** The total number of shares of capital stock which the Company is authorized to issue is eleven million (11,000,000), of which ten million (10,000,000) shall be classified as Class A Common Stock, \$.001 par value, and one million (1,000,000) shall be classified as Class B Common Stock, \$.001 par value. The Class A Common Stock and the Class B Common Stock shall collectively be called the "Common Stock."

**Fifth.** The Common Stock shall have the following powers, preferences, rights and limitations:

- a. Each holder of Class A Common Stock shall be entitled to a number of votes in person or by proxy on all matters submitted to a vote of the stockholders of the Company equal to one (1) multiplied by the number of shares of Class A Common Stock held by such holder.
- b. Each holder of Class B Common Stock shall be entitled to a number of votes in person or by proxy on all matters submitted to a vote of the stockholders of the Company equal to ten (10) multiplied by the sum of (1) the number of shares of Class B Common Stock held by such holder and (2) the number of Membership Units held by such holder. "Membership Units" shall mean Class B membership units in BRUT, LLC, the Delaware limited liability company of which the Company is the sole manager, or any successor entity thereto (and any membership interests into which such units may be hereafter converted or exchanged, adjusted as appropriate).
- c. The Board of Directors shall initially consist of ten (10) directors and the holders of Class B Common Stock, voting separately as a class, shall be entitled to elect all ten directors. The number of directors shall thereafter be such number as is fixed from time to time by the by-laws.

- d. Except as otherwise required by this Certificate of Incorporation or the bylaws of the Company or by applicable law, the holders of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Company.

**Sixth. Class B Common Stock and Membership Units shall be convertible as follows:**

- a. Each holder of Class B Common Stock shall be entitled to convert, at any time and from time to time, any or all of the shares of such holder's Class B Common Stock, on a one-for-one basis, into the same number of fully paid and non-assessable shares of Class A Common Stock. Such right shall be exercised by the surrender to the Company of the certificate or certificates representing the shares of Class B Common Stock to be converted at any time during normal business hours at the principal executive offices of the Company or at the office of the Company's transfer agent (the "Transfer Agent"), accompanied by a written notice of the holder of such shares stating that such holder desires to convert such shares, or a stated number of the shares represented by such certificate or certificates, into an equal number of shares of Class A Common Stock, and (if so required by the Company or the Transfer Agent) by instruments of transfer, in form satisfactory to the Company and the Transfer Agent, duly executed by such holder.
- b. Each holder (other than the Company) of a Membership Unit shall be entitled to exchange, at any time and from time to time, any or all of such holder's Membership Units, on a one-for-one basis, into the same number of fully paid and non-assessable shares of Class A Common Stock. Such right shall be exercised by the delivery to the Company of a written notice of the holder of such Membership Units stating that such holder desires to convert a stated number of Membership Units into an equal number of shares of Class A Common Stock.
- c. As promptly as practicable following the surrender for conversion of shares of Class B Common Stock or receipt of notice of conversion with respect to Membership Units in the manner provided above, the Company will deliver or cause to be delivered at the office of the Transfer Agent a certificate or certificates representing the number of full shares of Class A Common Stock issuable upon such conversion or exchange, issued in such name or names as the holder may direct. Such conversion shall be deemed to have been effected immediately prior to the close of business on the date of the surrender of the Class B Common Stock or Membership Units. Upon the date any such conversion is made, all rights of the holder of such shares of Class B Common Stock or Membership Units as such holder shall cease, and the person or persons in whose name or names the certificate or certificates representing the shares of Class A Common Stock are to be issued shall be treated for all

purposes as having become the record holder or holders of such shares of Class A Common Stock.

- d. In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then a holder of Class B Common Stock or Membership Units shall be entitled to receive upon conversion or exchange the amount of such security that such holder would have received if such conversion or exchange had occurred immediately prior to the record date of such reclassification or other similar transaction.
- e. The Company shall not in any manner subdivide (by any stock split, stock dividend, reclassification, recapitalization, or otherwise) or combine (by reverse stock split, reclassification, recapitalization or otherwise) the outstanding shares of one class of Common Stock unless the outstanding shares of all classes of Common Stock shall be proportionately subdivided or combined. The exchange rights for Membership Units shall be adjusted accordingly if there is: (1) any subdivision (by any unit split, unit distribution, reclassification, recapitalization or otherwise) of the Membership Units that is not accompanied by an identical subdivision or combination of the Common Stock; or (2) any subdivision (by any stock split, stock dividend, reclassification, recapitalization, or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the Common Stock that is not accompanied by an identical subdivision or combination of the Membership Units.

**Seventh.** The name and mailing address of the incorporator is:

<u>Name</u>	<u>Mailing Address</u>
Cheryl Miller	Foley & Lardner Suite 3300 330 North Wabash Avenue Chicago, Illinois 60611-3608

**Eighth.** The Company is to have perpetual existence.

**Ninth.** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend, change, add to or repeal the bylaws of the Company without the assent or vote of the stockholders.

**Tenth.** Elections of directors need not be by written ballot unless the bylaws of the Company shall so provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Company.

**Eleventh.** A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit.

**Twelfth.** The Company shall, to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify all persons whom it may indemnify pursuant thereto.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 2nd day of August, 2001.

INCORPORATOR:

*Cheryl Miller*  
Cheryl Miller

**BYLAWS  
OF  
BRUT, Inc.**

## ARTICLE I OFFICES

- 1.1 Principal and Business Offices. BRUT, Inc. (the “Company”) may have such principal and other business offices, either within or without the State of Delaware, as the Board of Directors of the Company (the “Board of Directors”) may designate or as the business of the Company may require from time to time.
- 1.2 Registered Office. The registered office of the Company required by the Delaware General Corporation Law to be maintained in the State of Delaware may be, but need not be, identical with the principal office in the State of Delaware, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent. The business office of the registered agent of the Company shall be identical to such registered office.

## ARTICLE II \* MEETINGS OF STOCKHOLDERS

- 2.1 Place of Meetings. Meetings of the stockholders of the Company (the “Stockholders”) shall be held at any place, either within or without the State of Delaware, as may be designated by the Board of Directors. In the absence of any such designation, Stockholders’ meetings shall be held at the corporate headquarters of the Company.
- 2.2 Annual Meeting. The annual meeting of Stockholders shall be held each year on a date and at a time designated by the Board of Directors. In the absence of such designation, the annual meeting of Stockholders shall be held on the second Friday in May of each year. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding business day. At the meeting, Directors of the Company (each a “Director,” and collectively, “Directors”) shall be elected and any other proper business may be transacted.
- 2.3 Special Meetings. A special meeting of the Stockholders may be called at any time by the Board of Directors or by the Chief Executive Officer. The Stockholders may not call a special meeting.
- 2.4 Notice of Stockholders’ Meetings. All notices of meetings of the Stockholders shall be in writing and shall be sent or otherwise given in accordance with these Bylaws not less than twenty nor more than sixty days before the date of the meeting to each Stockholder entitled to vote at such meeting. The notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.
- 2.5 Stockholder Nominees and Stockholder Business. Nominations for the election of Directors and any other business proposed to be brought before any Stockholder meeting may be made by the Board of Directors or by any Stockholder of record holding shares of the stock of the Company entitled to vote in the election of Directors

generally if such nomination or business proposed is otherwise proper business before such meeting.

- 2.6 Manner of Giving Notice; Affidavit of Notice. Written notice of any meeting of Stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the Stockholder at his address as it appears on the records of the Company. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent of the Company that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.
- 2.7 Quorum. The holders of a majority of voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the Stockholders for the transaction of business except as otherwise provided by statute or by the Company's certificate of incorporation (the "Certificate of Incorporation"). If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the Stockholders unless the vote of a greater number or voting by classes is required by law or the Certificate of Incorporation. If, however, such quorum is not present or represented at any meeting of the Stockholders, then either (a) the Chairman of the Board of Directors, or his designee, or (b) the Stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.
- 2.8 Adjourned Meeting; Notice. When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Company may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting.
- 2.9 Conduct of Business. The Chairman of the Board of Directors, or his designee, shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of business.
- 2.10 Waiver of Notice. Whenever notice is required to be given under any provision of the Delaware General Corporation Law or of the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the

person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

#### 2.11 Record Date.

- (a) In order that the Company may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than twenty days before the date of such meeting, nor more than sixty days prior to any other action.
- (b) If the Board of Directors does not so fix a record date, (i) the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and (ii) the record date for determining Stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.
- (c) A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.12 Voting Records. The officer having charge of the stock transfer books for shares of the Company shall, at least ten (10) days before each meeting of Stockholders, make a complete record of the Stockholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open to the examination of any Stockholders, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held as specified in the notice of the meeting or at the place of the meeting. The record shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Stockholders present. The original stock transfer books shall be the only evidence as to who are the Stockholders entitled to examine such record or transfer books or to vote at any meeting of Stockholders.

- 2.13 Proxies. At all meetings of Stockholders, a Stockholder entitled to vote may vote in person or by proxy appointed in writing by the Stockholder or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. Unless otherwise provided in the proxy and supported by sufficient interest, a proxy may be revoked at any time before it is voted, either by written notice filed with the Secretary or the acting secretary or the meeting or by oral notice given by the Stockholder to the presiding officer during the meeting. The presence of a Stockholder who has filed a proxy shall not of itself constitute a revocation. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy. The Board of Directors shall have the power and authority to make rules establishing presumptions as to the validity and sufficiency of proxies.
- 2.14 Voting of Shares. -Each outstanding share shall be entitled to one vote upon each matter submitted to a vote at a meeting of Stockholders, except to the extent that the voting rights of the shares of any class or classes are enlarged, limited or denied by the Certificate of Incorporation.
- 2.15 Voting of Shares by Certain Holders.
- (a) Other Corporations. Shares standing in the name of another corporation may be voted either in person or by proxy, by the president of such corporation or any other officer appointed by such president. A proxy executed by any principal officer of such other corporation or assistant thereto shall be conclusive evidence of the signer's authority to act, in the absence of express notice to the Company, given in writing to the Secretary of the Company, of the designation of some other person by the Board of Directors or the bylaws of such other corporation.
  - (b) Legal Representatives and Fiduciaries. Shares held by any administrator, executor, guardian, conservator, trustee in bankruptcy, receiver, or assignee for creditors may be voted by a duly executed proxy, without a transfer of such shares to his name. Shares standing in the name of a fiduciary may be voted by him, either in person or by proxy. A proxy executed by a fiduciary, shall be conclusive evidence of the signer's authority to act, in the absence of express notice to the Company, given in writing to the Secretary of the Company, that such manner of voting is expressly prohibited or otherwise directed by the document creating the fiduciary relationship.
  - (c) Pledges. A Stockholder whose shares are pledged shall be entitled to vote such shares unless in the transfer of the shares the pledgor has expressly authorized the pledgee to vote the shares and thereafter the pledgee, or his proxy, shall be entitled to vote the shares so transferred.
  - (d) Treasury Stock and Subsidiaries. Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of

directors of such other corporation is held by the Company, shall be voted at any meeting or counted in determining the total number of outstanding shares entitled to vote, but shares of its own issue held by its corporation in a fiduciary capacity, or held by such other corporation in a fiduciary capacity, may be voted and shall be counted in determining the total number of outstanding shares entitled to vote.

- (e) Joint Holders. Shares of record in the names of two or more persons or shares to which two or more persons have the same fiduciary relationship, unless the Secretary of the Company is given notice otherwise and furnished with a copy of the instrument creating the relationship, may be voted as follows: (i) if voted by an individual, his vote binds all holders; or (ii) if voted by more than one holder, the majority vote binds all, unless the vote is evenly split in which case the shares may be voted proportionately, or according to the ownership interest as shown in the instrument filed with the Secretary of the Company.

- 2.16 Stockholders Consent Without Meeting. Any action required or permitted by the Certificate of Incorporation or these Bylaws or any provision of law to be taken at a meeting of the Stockholders, may be taken without a meeting, prior notice or vote, if a consent in writing, setting forth the action so taken, shall be signed by the number of Stockholders required to authorize such action at a meeting. If the action is authorized by less than unanimous consent, notice of the action shall be given to nonconsenting Stockholders.

### ARTICLE III DIRECTORS

- 3.1 Powers. Subject to the provisions of the Delaware General Corporation Law and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the Stockholders, the business and affairs of the Company shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

3.2 Number of Directors.

- (a) The Board of Directors shall consist of no more than ten members. The number of Directors who shall constitute the whole Board of Directors shall be such number as the Board of Directors shall from time to time designate.
- (b) No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

3.3 Tenure and Qualifications.

- (a) At each annual meeting of Stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a one year term of office to

expire at the next succeeding annual meeting of Stockholders after their election with each Director to hold office until his successor shall have been duly elected and qualified.

- (b) Each Director, including a Director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his earlier resignation or removal.
- (c) A Director may be removed from office by affirmative vote of a majority of the outstanding shares entitled to vote for the election of such Director, taken at a meeting of Stockholders called for that purpose.
- (d) A Director may resign at any time by filing his written resignation with the Secretary of the Company.
- (e) Directors need not be residents of the State of Delaware or Stockholders of the Company.

3.4 Vacancies. In the event the position of a Director becomes vacant (including as a result of an increase in the number of Directors) such vacancy shall be filled on an interim basis by the Board of Directors, and contemporaneously with the filling of such vacancy the Board of Directors shall provide notice to the Stockholders and commence the nomination and election process in accordance with the Certificate of Incorporation, these Bylaws and the procedures previously established by the Board of Directors or by agreement among the Stockholders.

3.5 Meetings by Telephone. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of such Board of Directors, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this Section 3.5 shall constitute presence in person at the meeting.

3.6 Directors' Meetings. The Board of Directors shall hold an annual meeting, and may hold regular meetings, at such time and place (which need not be in the State of Delaware) as the Board of Directors determines by resolution.

3.7 Special Meetings; Notice.

- (a) Special meetings of the Board of Directors may be called by any Director.
- (b) Notice of the time and place of special meetings shall be delivered personally, by telephone, or by electronic mail ("e-mail") to each Director or sent by first-class mail, charges prepaid, addressed in either case to each Director at that Director's address as it is shown on the records of the Company. If the notice

is mailed, it shall be deposited in the United States mail at least seven days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by e-mail, it shall be delivered personally or by telephone or by e-mail at least forty-eight hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Director or to a person at the office of the Director who the person giving the notice has reason to believe will promptly communicate it to the Director. The notice need not specify the purpose or, if the meeting is to be held at the principal executive office of the Company, the place of the meeting.

- (c) All Directors shall be entitled to receive required notices and agendas of upcoming Board of Directors meetings, attend all Board of Directors meetings, participate in all discussions and receive minutes from previous Board of Directors meetings. Meetings of the Board of Directors may be called on at least five Business Days advance written notice to each other Director. Such notice shall state the purpose or the business to be transacted at such meeting.

### 3.8 Quorum.

- (a) Attendance by at least a majority of Directors shall constitute a quorum for the transaction of any business, provided that all Directors who have been appointed prior to such meeting have been given notice of the date, time and location of such meeting in accordance with these Bylaws. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.
- (b) If a quorum is not present at any meeting of the Board of Directors, then the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.
- (c) A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

- 3.9 Waiver of Notice. Whenever notice is required to be given under any provision of the Delaware General Corporation Law, the Certificate of Incorporation, or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when such person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or members of a committee of Directors, need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

- 3.10 Board Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors (or all Directors on such committee, as the case may be) then in office and the consent is filed with the minutes of proceedings of the Board of Directors or committee.
- 3.11 Compensation of Directors. Except to the extent provided for in a separate employment agreement entered into with the Company, no Director shall be entitled to any compensation from the Company solely in such person's capacity as a Director.
- 3.12 Chairman. The Board of Directors shall be entitled to appoint the Chairman of the Board of Directors (the "Chairman"). The Chairman shall preside over all meetings of the Board of Directors and shall have such other powers, authority and responsibility as the Board of Directors may, from time to time, delegate to such Chairman. The Chairman shall (subject to the right of the Board of Directors to designate the Chairman as provided above) be entitled to hold office until the end of the Chairman's term of office (which term shall be decided by the vote of the Board of Directors), death, resignation or removal. The person who is serving as Chairman may be removed as removal may be exercised at any time.

#### ARTICLE IV COMMITTEES

- 4.1 Committees of Directors.
- (a) The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the Directors. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority (a) approving or adopting or recommending to the Stockholders, any action or matter expressly required by the Delaware General Corporation Law to be submitted to Stockholders for approval or (b) adopting, amending, or repealing any Bylaws of the Company;

and, unless the board resolution establishing the committee, the Bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law.

- (b) Each committee shall serve at the pleasure of the Board of Directors and may be dissolved by the Board of Directors at any time. Each committee shall have such name as may be determined from time to time by resolution adopted by the Board of Directors.

4.2 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

4.3 Meetings and Action of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these Bylaws, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

## ARTICLE V OFFICERS

### 5.1 Officers.

- (a) The Company shall have agents, referred to as "Officers" of the Company. These agents shall be appointed in the manner specified below, and shall have the titles and authority specified in this Section.
- (b) The Officers shall be the Chief Executive Officer, the President, the Chief Financial Officer (who shall also be the Treasurer) and the Secretary. The initial Chief Executive Officer shall be Richard D. Schenkman. The initial President shall be Bryan K. Hyndman. The initial Secretary shall be William O'Brien. Any person may hold two or more offices.
- (c) The Company may also have such other Officers as may be appointed in accordance with Section 5.2 of these Bylaws. Any number of offices may be held by the same person.

- (d) Officers shall conduct the affairs of the Company in the best interests of the Company and the mutual best interests of the Stockholders, including the safekeeping and use of all Company funds and assets and the use thereof for the benefit of the Company and compliance with all applicable laws, regulations, and rules.
- (e) At the election of the Chief Executive Officer, the responsibilities of the Officers may be reduced or eliminated and, upon the exercise of such election, the responsibilities that were formerly the responsibility of any Officer shall become the responsibility of the Chief Executive Officer. At the election of the Board of Directors, any one or more of the responsibilities of the Board of Directors may be delegated, from time to time, to the Chief Executive Officer.

#### 5.2 Appointment of Officers.

- (a) The Chief Executive Officer of the Company shall be appointed by the Board of Directors, subject to the rights, if any, of the Chief Executive Officer under any contract of employment.
- (b) The Chief Executive Officer may appoint such other Officers and agents as the business of the Company may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Chief Executive Officer may from time to time determine.

#### 5.3 Removal and Resignation of Officers.

- (a) The Chief Executive Officer shall have the power to select, appoint and remove (with or without cause) all necessary Officers and employees of the Company, make new appointments to fill vacancies and to prescribe the powers and duties of such Officers and employees. Any removal of an Officer shall be without prejudice to the rights, if any, of any contract of employment to which the Officer is a party.
- (b) Any Officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party.

#### 5.4 Chief Executive Officer.

- (a) The Chief Executive Officer may be removed, with or without cause, only by the Board of Directors, subject to the rights, if any, of the Chief Executive Officer under any contract of employment. A vacancy in the office of the Chief Executive Officer may be filled by the Board of Directors. If the Board

of Directors fails to fill any vacancy in such office, the responsibilities of the Chief Executive Officer shall be carried out by the President or the Board of Directors.

- (b) The Chief Executive Officer shall have general charge of the entire business and affairs of the Company and the authority to instruct, direct and control its Officers, employees and agents. He may sign certificates of stock and sign and seal bonds, debentures, contracts or other obligations authorized by the Board of Directors, and may, without previous authority of the Board of Directors, make such contracts as the ordinary conduct of the Company's business requires. The Chief Executive Officer may delegate any of his powers to the President or other Officers of the Company.
- (c) Subject to the limitations imposed by these Bylaws, any employment agreement, any employee plan or any resolution of the Board of Directors, the Chief Executive Officer shall report to the Board of Directors. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to him by these Bylaws, or the Board of Directors, including the duties and any powers stated in any employment agreement. Notwithstanding anything to the contrary, without specific written authorization by the Board of Directors, the Chief Executive Officer (and each of the other Officers) shall have no power or authority to take or cause the Company to take any action, or engage or cause the Company to engage in any activity, which is outside the ordinary course of business of the Company. The Chief Executive Officer shall also have the responsibility to assure that the Company is and will be in compliance with applicable laws, regulations, and rules.
- (d) In the absence of the Chief Executive Officer, the President shall, except as hereinafter provided, have all of the powers and duties conferred upon the Chief Executive Officer. In such cases the President shall have the same power as the Chief Executive Officer to sign certificates, contracts, obligations and other instruments of the Company. In such cases the President shall perform such other duties and may exercise such other powers as may from time to time be assigned to him by these Bylaws, the Board of Directors or the Chief Executive Officer.

5.5 President. The President shall have those general powers and duties of management as prescribed by the Chief Executive Officer or these Bylaws.

5.6 Chief Financial Officer and Treasurer; Assistant Treasurers. The Chief Financial Officer shall keep or cause to be kept the books of account of the Company and shall render statements of the financial affairs of the Company in such form and as often as required by the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Company. The Chief Financial Officer shall perform all other duties commonly

incident to his office and shall perform such other duties and have such other powers as the Chief Executive Officer shall designate from time to time. The Assistant Treasurers shall exercise the power of the Chief Financial Officer during that Officer's absence or inability or refusal to act. Each of the Assistant Treasurers shall possess the same power as the Chief Financial Officer to sign all certificates, contracts, obligations and other instruments of the Company. In the absence of the Chief Financial Officer, a person chosen by the Chief Executive Officer shall have all of the powers and duties conferred upon the Chief Financial Officer.

- 5.7 Secretary; Assistant Secretaries. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the members and the meetings or actions of the Board of Directors or any other subcommittees, shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law, shall be custodian of all records (other than financial), shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed, and, in general, shall perform all duties incident to the office of the Secretary and such other duties as may, from time to time, be assigned to him by these Bylaws, the Board of Directors or the Chief Executive Officer. The Assistant Secretaries shall exercise the powers of the Secretary during that Officer's absence or inability or refusal to act. Each of the Assistant Secretaries shall possess the same power as the Secretary to sign certificates, contracts, obligations and other instruments of the Company.

## ARTICLE VI RECORDS AND REPORTS

### 6.1 Maintenance and Inspection of Records.

- (a) The Company shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its Stockholders listing their names and addresses and the number and class of shares held by each Stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.
- (b) Any Stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Company's stock ledger, a list of its Stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a Stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent so to act on behalf of the Stockholder. The demand under oath shall be directed to the Company at its registered office in Delaware or at its principal place of business.

- 6.2 Inspection by Directors. Any Director shall have the right to examine the Company's stock ledger, a list of its Stockholders, and its other books and records for a purpose reasonably related to his position as a Director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a Director is entitled to the inspection sought. The Court may summarily order the Company to permit the Director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

ARTICLE VII  
CERTIFICATES FOR SHARES AND THEIR TRANSFER

- 7.1 Certificates for Shares. Certificates representing shares of the Company shall be in such form, consistent with law, as shall be determined by the Board of Directors. Such certificates shall be signed by the Chief Executive Officer, the President or a Vice President and by the Secretary or an Assistant Secretary or Treasurer or Assistant Treasurer. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Company. All certificates surrendered to the Company for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except as provided in Section 7.6.
- 7.2 Facsimile Signatures and Seal. The seal of the Company on any certificates for shares may be a facsimile. The signature of the Chief Executive Officer, the President or a Vice President and by the Secretary or an Assistant Secretary or Treasurer or Assistant Treasurer upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent, or a registrar, other than the Company itself or an employee of the Company.
- 7.3 Signature by Former Officers. In case any Officer, who has signed or whose facsimile signature has been placed upon any certificate for shares, shall have ceased to be such Officer before such certificate is issued, it may be issued by the Company with the same effect as if he were such Officer at the date of its issue.
- 7.4 Transfer of Shares. Prior to due presentment of a certificate for shares for registration of transfer, the Company may treat the registered owner of such shares as the person exclusively entitled to vote, to receive notifications and otherwise to have and exercise all the rights and power of an owner. Where a certificate for shares is presented to the Company with a request to register for transfer, the Company shall not be liable to the owner or any other person suffering loss as a result of such registration of transfer if (a) there were on or with the certificate the necessary endorsements, and (b) the Company had no duty to inquire into adverse claims or has discharged by such duty.

The Company may require reasonable assurance that said endorsements are genuine and effective and compliance with such other regulations as may be prescribed by or under the authority of the Board of Directors. Where a transfer of shares is made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the shares are presented, both the transferor and the transferee so request.

7.5 Restrictions on Transfer. The face or reverse side of each certificate representing shares shall bear a conspicuous notation of any restriction imposed by the Company upon the transfer of such shares. Otherwise the restriction is invalid except against those with actual knowledge of the restrictions.

7.6 Lost, Destroyed or Stolen Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the person requesting such new certificate or certificates, or his or her legal representative, to give the Company a bond in such sum as it may direct as indemnity against any claim that may be made against the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

7.7 Stock Certificates; Consideration for Shares; Partly Paid Shares.

- (a) The shares of the Company may be represented by certificates or take the form of uncertificated shares.
- (b) The shares of the Company may be issued for such consideration as shall be fixed from time to time by the Board of Directors, consistent with the law of the State of Delaware.
- (c) The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.8 Stock Regulations. The Board of Directors shall have the power and authority to make all such further rules and regulations not inconsistent with the statutes of the State of Delaware as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Company.

## ARTICLE VIII AMENDMENTS

- 8.1 By Stockholders. These Bylaws may be adopted, amended or repealed and new bylaws may be adopted by the Stockholders entitled to vote at the Stockholders' annual meeting without prior notice or any other meeting provided the amendment under consideration has been set forth in the notice of meeting, by affirmative vote of not less than a majority of the shares present or represented at any meeting at which a quorum is in attendance.
- 8.2 By Directors. These Bylaws may be adopted, amended or repealed by the Board of Directors as provided in the Certificate of Incorporation by the affirmative vote of a majority of the number of Directors present at any meeting at which a quorum is in attendance; but no bylaw adopted by the Stockholders shall be amended or repealed by the Board of Directors if the Bylaws so provide.
- 8.3 Implied Amendments. Any action taken or authorized by the Board of Directors, which would be inconsistent with the Bylaws then in effect but if taken or authorized by affirmative vote of not less than the number of Directors required to amend the Bylaws so that the Bylaws would be consistent with such action, shall be given the same effect as though the Bylaws had been temporarily amended or suspended so far, but only so far, as is necessary to permit the specific action so taken or authorized.

## ARTICLE IX INDEMNIFICATION OF DIRECTORS AND OFFICERS

- 9.1 Indemnification of Directors, Officers and Employees. The Company shall indemnify to the full extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that the person, his or her testator or intestate is or was a director, officer or employee of the Company or any predecessor of the Company or serves or served any other enterprise as a director, officer or employee at the request of the Company or any predecessor of the Company.

## ARTICLE X GENERAL MATTERS

- 10.1 Execution of Corporate Contracts and Instruments. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any Officer or Officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Company; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an Officer, no Officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount, except for the Chief Executive Officer and the Chief Financial Officer.

- 10.2 Accounting Principles. All accounting of the Company shall be done in accordance with generally accepted accounting principles consistently applied ("GAAP"), to the extent applicable, except where GAAP is inconsistent with regulatory requirements to which the Company (or any of its subsidiaries) is bound.
- 10.3 Bank Accounts. The Chief Executive Officer shall cause the Company to establish, maintain and designate signatories on one or more separate bank and investment accounts for Company funds in the Company name with such financial institutions and firms as the Chief Executive Officer may select and designate signatories thereon. The Company's funds shall not be commingled with the funds of any other person.
- 10.4 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.
- 10.5 Dividends. The Board of Directors, subject to any restrictions contained in the Delaware General Corporation Law or the Certificate of Incorporation, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock.
- 10.6 Fiscal Year. The fiscal year of the Company shall be the calendar year unless otherwise fixed by resolution of the Board of Directors and may be changed by the Board of Directors.